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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,942	01/31/2006	Robert Kagermeier	2003P07355WOUS	9408
7590 12/02/2009 Brinks Hofer Gilson & Lione P O Box 10395 Chicago, IL 60610				
EXAMINER				
CERULLO, LILIANA P				
ART UNIT		PAPER NUMBER		
2629				
MAIL DATE		DELIVERY MODE		
12/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/566,942

**Applicant(s)**

KAGERMEIER ET AL.

**Examiner**

LILIANA CERULLO

**Art Unit**

2629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Amr Awad/  
Supervisory Patent Examiner, Art Unit 2629

/L. C./  
Examiner, Art Unit 2629

Continuation of 11, does NOT place the application in condition for allowance because: On the After Final response dated 11/20/2009, the Applicants did not amend any claims, but presented arguments with respect to rejected claims 1 and 3.

On the Remarks (dated 11/20/2009, pgs. 5-6) the Applicants argued with respect to claims 1 and 3, regarding Morita in view of Kienzle teaching of a "sterilizable screen protective housing connected mechanically to the sterilizable screen" that Kienzle discloses an imager (Figs. 405, imager 151) and not a screen as claimed, and therefore not all limitations are taught. The examiner must respectfully disagree, please note that as explained in the final rejection dated 9/30/2009, the Kienzle reference was not used to teach the screen, but to obviate the use of a sterile drape that is used to cover a C-arm in a surgery room (Kienzle, Fig. 10) and, therefore upon combination, the sterile drape of Kienzle (not the screen) would be used to protect the screen in Morita's arm in the surgery room (Figs. 21-22, panel 169 are the screen, and Fig. 16 shows the whole assembly and arm 140).

The Applicants also argue with respect to claims 1 and 3 (Remarks dated 11/20/2009, pg. 6), that Morita in view of Kienzle and Tomasi do not disclose "the protective housing operable for receiving, in a reversible manner, the detection device", because Tomasi discloses that the virtual input device is displayed on a work surface that is separated from the display (see Tomasi, Fig. 1A, keyboard on surface 40 separate from display 140), and that optical system device 60 and projector 20 are not the same. The examiner must respectfully disagree, please recall that as explained in the final office action dated 9/30/2009, the detection device upon combination of Morita and Tomasi is Morita's detector 60 of Fig. 1A (Tomasi para. 41 referring to OS2 60 detecting that a letter has been pressed) which is clearly shown as part of the display assembly in Tomasi's Fig. 1A. Therefore, upon combination, the assembly of screen, projector and detection device taught by Tomasi (Tomasi, Fig. 1A, screen 140, projector 20 and detector 60) would be replaced in the location of Morita's screen/projector arm (Morita, Fig. 16, 140 arm) and upon combination with Kienzle, this assembly would be covered by a sterile drape (Kienzle, Fig. 10).

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